

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
)	
v.)	Civ. No. 98-
)	
)	
THE CITY OF PHILADELPHIA; EDWARD)	
G. RENDELL, MAYOR OF THE CITY OF)	
PHILADELPHIA; ESTELLE B. RICHMAN,)	
COMMISSIONER, HEALTH DEPARTMENT;)	
EPISCOPAL LONG TERM CARE, AS)	
OPERATORS OF THE PHILADELPHIA)	
NURSING HOME,)	
)	
Defendants.)	
)	
)	
)	

SETTLEMENT AGREEMENT

I. INTRODUCTION

A. This case was instituted by the United States pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997, and pursuant to the False Claims Act, 31 U.S.C. § 3729 et seq.

B. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345 and 31 U.S.C. § 3729.

C. Venue is appropriate pursuant to 28 U.S.C. § 1391(b).

D. 42 U.S.C. § 1997a and 31 U.S.C. §§ 3730 and 3732 give the United States standing to file a complaint under CRIPA and the False Claims Act.

E. The Defendants are the City of Philadelphia, Edward G. Rendell, Mayor of the City of Philadelphia ("the City"), Estelle B. Richman, Commissioner, Health Department (collectively "City Defendants"); and Episcopal Long Term Care ("ELTC"). All individual City Defendants are named in their official capacities. ELTC is named in its capacity as operator of the Philadelphia Nursing Home ("PNH") under contract with the City.

F. The Defendants have authority and responsibility for the operation of PNH which, at the time of the filing of this Settlement Agreement, is a certified "Provider" under Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act. The individual Defendants are officers of the Executive Branch of the City of Philadelphia. ELTC provides essential health care and related services to residents at PNH pursuant to a contract with the City of Philadelphia.

1. ELTC is responsible for corrective action under this Settlement Agreement only for conditions and practices that have occurred and are occurring while it is the PNH contractor.

2. Nothing herein is intended to waive or release any claims or rights as against Service Master Diversified Health Services, Inc. and/or Service Master Diversified Health Services L.P., which previously operated PNH under a subcontract with ELTC.

3. In the event that ELTC is no longer the PNH contractor and the City should hire another contractor to operate PNH, any future successor shall similarly be bound by the provisions of this Settlement Agreement and the responsibilities under this Settlement Agreement will be transferred to such successor.

G. On August 17, 1995, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, notified the Mayor of the City of Philadelphia, the City Solicitor of the City of Philadelphia, the Commissioner of the City of Philadelphia Health Department, and Mary K.

("Molly") Hess, the individual appointed by ELTC to serve as the Executive Director of PNH pursuant to contractual arrangements between the City and ELTC, of her intention to investigate allegations of unconstitutional and unlawful conditions at PNH pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997.

H. In November 1995, the Civil Rights Division, in cooperation with the United States Attorney's Office for the Eastern District of Pennsylvania, commenced an investigation into the care being provided to residents of PNH. Thereafter, on December 19, 1996, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, informed the Mayor of the City of Philadelphia, the Acting City Solicitor of the City of Philadelphia, the Commissioner of the City of Philadelphia Health Department, and Molly Hess, the Executive Director of PNH, that the Attorney General concluded that she had reasonable cause to believe that persons residing in PNH ("residents") were being subjected to conditions that deprived them of their federal statutory rights and of their rights, privileges, and immunities secured by the Constitution of the United States.

I. The parties agree that the care, treatment, and conditions of residency of PNH residents implicate rights that are secured and protected by the Constitution of the United States and implicate their rights under Titles XVIII and XIX of the Social Security Act (Medicare/Medicaid) and the Americans with Disabilities Act. The parties entering into this Settlement Agreement, for the purpose of avoiding protracted and adversarial

litigation, agree to the provisions set forth herein.

J. In entering into this Settlement Agreement, neither City Defendants nor ELTC admit to any violation of law or admit any fact, and this Settlement Agreement may not be used as evidence of liability against the parties to this Settlement Agreement in any other civil proceeding. Nothing herein is intended to waive any rights or claims with respect to third parties who are not parties to this Settlement Agreement.

K. The parties agree that the provisions of this Settlement Agreement are a lawful, fair and appropriate resolution of this case.

L. This Settlement Agreement, voluntarily entered into, shall be entered by the United States District Court for the Eastern District of Pennsylvania and shall be enforceable as an order of the Court solely to the extent set forth herein.

M. This Settlement Agreement is legally binding and judicially enforceable by the parties and it shall be applicable to and binding upon all of the parties, their officers, agents, employees, assigns, and successors.

Now, therefore, the parties hereby agree as follows:

II. COMPLIANCE WITH FEDERAL LAW AND ATTACHED PROTOCOLS

A. In the operation and management of PNH and in providing services to PNH residents, the Defendants shall comply fully with the particular provisions of the Nursing Home Reform Act as embodied in Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 et seq., and Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 et seq., and the regulations and guidelines promulgated pursuant to these statutes. See attached Exhibit 1, 42 C.F.R. § 483, Subparts B, C, D, and E, § 483.1 through § 483.206. The parties agree that the language in 42 C.F.R. § 483.1 through § 483.206, as well as the attached long term care guidelines, are incorporated by reference into this Settlement Agreement and that the provisions of this Settlement Agreement are to be construed consistent therewith. Defendants shall also comply fully with the particular provisions of the PNH protocols attached to this Settlement Agreement and incorporated by reference herein. Defendants agree that their obligation to comply fully with the language of the attached protocols does not limit their obligation to comply fully with federal law or with the provisions of this Settlement Agreement.

B. Defendants' submission of plans of correction and/or certification by the Health Care Financing Administration (HCFA)

does not in and of itself constitute compliance with this Settlement Agreement. The conclusion of the Monitor (as defined in § XVII of this Agreement) that Defendants are out of compliance with the Settlement Agreement does not in and of itself constitute noncompliance with the Settlement Agreement.

C. Defendants shall comply fully with the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the regulations promulgated pursuant to these statutes.

D. Since the events in 1995 that led to the initiation of this matter, ELTC has developed and implemented a number of policies, procedures, protocols and action plans (collectively or individually hereinafter referred to as "protocols") which pertain to the subject matter in this Settlement Agreement, copies of which have been provided to the United States. Many of these documents have been attached as Exhibits to this Settlement Agreement and incorporated hereunder.

1. If the Defendants seek to modify a PNH protocol which has been attached to and incorporated into this Settlement Agreement, the Defendants shall first submit any proposed modification to the United States and the Monitor for review.

2. The United States or the Monitor may provide the Defendants with comments or recommendations regarding the proposed protocol modification within 30 days of receipt of the proposed modification.

3. If the United States or the Monitor does not submit any comments or recommendations, the Defendants shall submit the modification to the Court and the protocol modification shall become final upon submission to the Court with appropriate notice of filing to the Court, all parties and the Monitor.

4. In the event that the United States or the Monitor submits any comments or recommendations, the Defendants shall consider the comments and recommendations. If the Defendants decline to adopt the recommendations or comments of the United States or the Monitor, they shall so notify the United States and the Monitor, and the parties and the Monitor shall confer within 30 days.

5. If the parties reach agreement to modify a protocol, the parties shall submit the modification to the Court and the protocol modification shall become final upon submission to the Court with appropriate notice of filing to the Court, all parties and the Monitor. If the parties do not reach

agreement, Defendants may seek modification of the protocol with the Court by motion and the United States may present its objections.

6. A modified protocol may be implemented immediately, if necessary, due to emergency conditions or to comply with a change in the law. However, Defendants' modified protocol shall not be deemed a permanent modification until Defendants comply with §§ II.D.1-5 above.

III. RESIDENT SAFETY

A. Defendants shall provide a safe and functional environment for the residents. Defendants shall ensure that all PNH residents are free from mistreatment, verbal, sexual, physical, and mental abuse, corporal punishment, involuntary seclusion, neglect, and misappropriation of property.

B. Defendants shall comply fully with the particular provisions of the PNH protocols entitled "Interdisciplinary Environmental Rounds Process" and "Resident Accountability," attached as Exhibits 2 and 3 and incorporated by reference herein.

C. Defendants shall adequately supervise, monitor and safeguard the residents, especially those with histories of exhibiting behaviors that cause injury to themselves or others.

Residents shall be protected from being victimized by other aggressive residents.

D. The parties recognize that during the pendency of this matter, a behavioral unit, a dementia unit, and an adult unit have been created, along with program outlines and implementation schedules as more fully described in Exhibit 4, attached hereto and incorporated herein.

E. Defendants shall notify the United States monthly of any resident death, specifying for each death, the first name and last initial of the resident, the date of death, and, to the extent that such information is available to Defendants, a brief description of the events surrounding the death. Defendants shall also submit to the United States monthly a copy of all investigation letters sent to the Commonwealth of Pennsylvania Department of Health, as required by law, detailing matters investigated at PNH.

IV. BASIC CARE

Defendants shall ensure that the PNH staff members provide residents with appropriate basic care services that meet the residents' needs. Among other things, Defendants shall ensure that all residents are bathed as scheduled and with sufficient frequency, that residents are shaved appropriately, that

residents are properly positioned, that residents' fingernails are clean and trimmed, and that residents are given proper oral and hair care.

V. COMPREHENSIVE ASSESSMENT AND CARE PLAN

A. Defendants shall ensure that there is a timely, complete, and accurate minimum data set (MDS) in each resident's chart; Defendants shall ensure that there is a current, complete and accurate interdisciplinary care plan in each resident's chart.

B. Defendants shall ensure that each resident's comprehensive care plan is implemented by appropriate and adequately trained staff.

C. Defendants shall comply fully with the particular provisions of the PNH protocols entitled "MDS/RAP: The Resident Assessment Instrument" and "Interdisciplinary Resident Plan of Care," attached as Exhibits 5 and 6 and incorporated by reference herein.

VI. ACTIVITIES

A. Defendants shall provide residents with sufficient, meaningful activities both during the week and on the weekends to ensure that the residents attain or maintain the highest practicable physical, mental, and psychosocial well-being.

B. For those residents who abuse alcohol, Defendants shall

provide them with appropriate productive activities and programming to address their alcohol abuse; Defendants shall comply fully with the particular provisions of the PNH protocol entitled "Assessment of Resident with Acute Mental Status Change or Suspected Intoxication," attached as Exhibit 7 and incorporated by reference herein.

VII. RESTRAINTS

A. Defendants shall ensure that physical or mechanical restraints are used only pursuant to accepted professional standards and that they are never used as punishment or for the convenience of staff. Defendants shall assess, document and ensure that any restraints used are the least restrictive restraints appropriate for the resident and the situation.

B. Defendants shall ensure that appropriate physicians' orders are obtained and followed before physical or mechanical restraints are utilized.

C. Defendants shall ensure that residents are released from any physical or mechanical restraints at least every two hours and are provided with adequate supervision, hydration, and circulation while in restraints.

VIII. PSYCHIATRIC CARE AND RELATED SERVICES

A. Defendants shall provide necessary mental health care and services to residents to enable them to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with a comprehensive assessment and plan of care that comport with federal regulations and guidelines.

B. Defendants shall provide adequate and appropriate psychiatric and mental health services in accordance with accepted professional standards to residents who need such services.

C. Defendants shall collect and document in the residents' records appropriate behavioral data for each resident requiring behavioral services. Consistent with accepted standards of practice, Defendants shall ensure that such data is incorporated into nurses' notes and psychiatrist's treatment plans for each resident.

D. Defendants shall comply fully with the particular provisions of the PNH protocol entitled "Mental Health Services," attached as Exhibit 8 and incorporated by reference herein.

IX. MEDICAL CARE

A. Defendants shall ensure that the PNH residents receive adequate preventive, chronic, routine, acute, follow-up, and

emergency medical care in accordance with generally accepted standards of care. Defendants shall provide the necessary health care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

B. Defendants shall comply fully with the particular provisions of the PNH protocol entitled "Medical Services," attached as Exhibit 9 and incorporated by reference herein. To the extent they have not already done so, Defendants shall ensure that:

1. Physicians promptly obtain, review and document lab and test results in the residents' charts and take appropriate actions to address any abnormal results;
2. Physicians complete monthly notes in the residents' charts on a timely basis;
3. Physicians do not rely inappropriately on telephone orders in treating residents; Defendants shall comply fully with the particular provisions of the PNH protocol entitled "Verbal Order Policy," attached as Exhibit 10 and incorporated by reference herein;
4. Physicians address promptly residents' significant or undesirable weight loss and personally provide continual

follow-up until the situation is adequately addressed;

5. Health care of insulin dependent diabetic residents

comports with generally accepted medical practice;

6. All individuals with seizure disorders at PNH are

provided with adequate and appropriate seizure management in

accordance with accepted professional standards of care and

with adequate and appropriate seizure documentation and with

adequate and appropriate diagnostic techniques;

7. Residents currently receiving anticonvulsant medication

receive the type of medication(s) that is (are) appropriate

and effective for the type of seizure and represents the

fewest number of medications appropriate for effective

seizure management;

8. There are a sufficient number of neurology consult hours

to meet the needs of the residents and to provide each

resident with a seizure disorder with an annual neurology

review; and

9. As indicated by accepted professional standards of care,

in the event of a medical emergency involving a resident,

including status epilepticus, facility staff will

immediately call an ambulance, and will initiate appropriate

emergency interventions while awaiting arrival of the

ambulance prior to transport of the resident to the closest available tertiary facility.

X. NURSING CARE

Defendants shall ensure that the PNH residents receive adequate and appropriate nursing care, and that nurses perform their responsibilities in keeping with accepted professional standards of care by adequately identifying health care problems, notifying physicians of health care problems, monitoring and intervening to ameliorate such problems, and keeping appropriate records of residents' health care status. Defendants shall provide the necessary nursing care and services to attain or maintain the residents' highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care. To the extent they have not already done so, Defendants shall take, at a minimum, the following measures:

1. Conduct adequate, comprehensive nursing assessments, with quarterly updates, of the nursing care needs of the residents;
2. Develop and implement adequate and appropriate comprehensive nursing care plans to address each resident's health care needs;

3. Routinely perform ongoing monitoring of serious medical conditions, including such basic procedures as taking vital signs and measuring weights;
4. Comply fully with the particular provisions of the PNH protocol entitled "Twenty-Four Hour Report Form," attached as Exhibit 11 and incorporated by reference herein;
5. Regularly monitor the progress of the PNH residents to ensure that staff members are continually taking whatever nursing steps are necessary for the health care of the individual;
6. Communicate essential information to physicians;
7. Follow physicians' orders or document fully why a physician's order was not expressly followed;
8. Administer medications in a timely manner consistent with accepted nursing practice and provide the necessary supervision and training to minimize medication errors; comply fully with the particular provisions of the PNH protocols entitled "Medication Procedures," "Resident Medication Refusal," and "Narcotic and Barbiturate Count Procedure," attached as Exhibits 12, 13, and 14 and incorporated by reference herein; when a medication error occurs, promptly investigate the error, properly document it

and take appropriate corrective action;

9. Ensure that residents are provided with adequate skin care, nutrition, turning and positioning to decrease the likelihood of skin breakdown; while not bound to all provisions of Clinical Practice Guidelines Number 15 entitled "Treatment of Pressure Ulcers," promulgated by the Agency for Health Care Policy Research, use the Clinical Practice Guidelines as a basis to establish PNH's plan for skin and wound care; and comply fully with the particular provisions of the PNH protocols entitled "Skin Assessment," "Wound Assessment," "Skin Care Guidelines," "Braden Scale," "Pressure Ulcer Treatment Guidelines," and "Medical Nutrition Therapy for Residents with Pressure Ulcers," attached as Exhibits 15, 16, 17, 18, 19, and 20 and incorporated by reference herein;

10. Follow standard infection control procedures, maintain aseptic technique and conditions at treatment sites; require staff to wash their hands after each direct resident contact for which hand washing is indicated by accepted professional practice; comply fully with the particular provisions of the PNH protocol entitled "Aseptic Technique," attached as Exhibit 21 and incorporated by reference herein;

11. Comply fully with the particular provisions of the PNH protocol entitled "Resident Call Bell," attached as Exhibit 22 and incorporated by reference herein;
12. Ensure that residents' nutritional intake is adequate, that weights are routinely and accurately recorded, and that residents receive appropriate diets, adequate amounts of food, and sufficient quantities of fresh water to ensure proper hydration; comply fully with the particular provisions of the PNH protocol entitled "Provision of Fresh Water," attached as Exhibit 23 and incorporated by reference herein; ensure that each resident receives food prepared by methods that conserve nutritive value, flavor, and appearance, and that is palatable, served at the proper temperature, and prepared in a form designed to meet individual needs; offer substitutes of similar nutritive value to residents who refuse food served; comply fully with the particular provisions of the PNH protocols entitled "Meal Delivery System," "Meal Consumption Record," and "Resident's Weight," attached as Exhibits 24, 25 and 26 and incorporated by reference herein;
13. Ensure nurses provide adequate and acceptable health care to residents with diabetes, including properly

evaluating blood sugars and providing appropriate treatment when necessary; ensure nurses promptly notify a supervising registered nurse and/or physician when necessary to meet the residents' needs; ensure nurses follow physicians' express orders with respect to the care and treatment of diabetic residents;

14. Comply fully with the particular provisions of the PNH protocol entitled "Nutritional Assessments," attached as Exhibit 27 and incorporated by reference herein; utilizing an interdisciplinary approach, properly assess and appropriately treat residents with swallowing problems and residents who are unable to eat orally in accordance with accepted professional procedures; to this end, (a) provide adequate care for those residents at risk of aspirating, take any appropriate steps to ameliorate the individual's aspiration risk, and develop and implement an individualized feeding and positioning plan for each individual identified as at risk of aspirating; and (b) to the extent that Defendants have not already done so, train staff in how to properly implement the feeding and positioning plans, and shall develop and implement a system to regularly monitor the progress of the residents who are at risk of aspirating

to ensure that the staff is continually taking whatever assessment, diagnostic, supervision and treatment steps are necessary to ameliorate the individual's risk; comply fully with the particular provisions of the PNH protocols entitled "Restorative Dining Program," "Dysphagia Team," "Gastrostomy (Peg) Tube Feeding," "Enteral Feedings," and "Weaning from Enteral Feedings," attached as Exhibits 28, 29, 30, 31 and 32 and incorporated by reference herein;

15. Comply fully with the particular provisions of the PNH protocol entitled "Tuberculosis Skin Testing Program," attached as Exhibit 33 and incorporated by reference herein; and

16. Take reasonable steps to procure sufficient nursing staff to ensure adequate continuity of resident care so that the facility is not excessively reliant on temporary contract nurses; procure sufficient nursing staff to provide nursing and related services on a 24-hour basis to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

XI. THERAPY SERVICES

Defendants shall provide each resident in need of therapy services with adequate and appropriate physical therapy and occupational therapy services. Defendants shall comply fully with the particular provisions of the PNH protocol entitled "Rehabilitation Services," attached as Exhibit 34 and incorporated by reference herein.

XII. RECORDKEEPING

Defendants shall ensure that PNH maintains medical records for each individual and Defendants shall comply fully with the particular provisions of the PNH protocol entitled "Medical Records," attached as Exhibit 35 and incorporated by reference herein.

XIII. STAFFING

A. Defendants shall ensure that a sufficient number of professional and non-professional staff are made available to fully meet the needs of the PNH residents as provided herein.

B. Defendants shall establish and maintain consult neurology and psychiatry consultation hours sufficient to meet the needs of the residents as provided herein.

XIV. MOST INTEGRATED SETTING

A. Defendants shall ensure that appropriate professionals evaluate each resident to determine whether the resident is being served in the most integrated setting appropriate to the resident's needs. An initial evaluation shall occur within fourteen days of admission as part of a comprehensive assessment of each resident. Each resident shall be re-evaluated at least every three months or sooner if there is a significant change in the resident's physical or mental condition.

B. Defendants shall implement professional decisions that a resident can be served in a more integrated setting by transferring the resident to the alternative setting to the extent required by law.

C. Prior to discharging a resident pursuant to § XIV.B, above, Defendants shall prepare a discharge plan specifying the needs of the resident and how those needs will be met at the alternative setting. For purposes of this Settlement Agreement, "discharge" shall mean the point at which an individual's active involvement with PNH is terminated and PNH no longer maintains active responsibility for the care of the individual.

D. Defendants shall provide the Monitor and the United States with a copy of the discharge plan for their review and

comment prior to discharging the resident. If the Monitor or the United States has any concern about the discharge plan or the alternative placement and so notifies Defendants, the parties shall meet in an effort to resolve the concern prior to discharge so long as the meeting can be timely convened in a manner to facilitate the placement to a more integrated setting.

E. In order to review the adequacy of the alternative placements during the term of this Settlement Agreement, the Monitor and the United States may visit the alternative settings. The Monitor and the United States will be responsible for arranging the visits.

XV. STAFF TRAINING

A. Defendants shall provide a training program to ensure that all professional and direct care staff who provide services to PNH residents are adequately trained to implement the requirements of this Settlement Agreement and are thereafter provided with in-service training on a regular basis. Consistent with the ELTC corrective action plan, Defendants shall provide a training program for all personnel, including physicians, nurses and dietitians regarding, at a minimum: nutrition; wound care and infection control; abuse and neglect; appropriate drug therapies for the elderly; mental health needs of residents; and a

coordinated interdisciplinary approach to providing care to residents.

B. Defendants shall also encourage its medical staff to regularly attend continuing medical education programs.

XVI. RETENTION OF TECHNICAL ASSISTANCE

If and to the extent that the Defendants require additional outside technical assistance to comply with the provisions of this Settlement Agreement, they shall obtain such technical assistance and provide to the Monitor a list of the professionals providing the assistance and a list of topics addressed by the professionals.

XVII. MONITOR

A. Rebecca Berlin shall be appointed as Monitor who shall have full authority to monitor the Defendants' compliance with the provisions of this Settlement Agreement consistent with the terms thereof. The Monitor shall assess independently Defendants' compliance with this Settlement Agreement, with the attached protocols, with 42 C.F.R. § 483.1 through § 483.206, as well as the attached long term care guidelines as incorporated into this Settlement Agreement. Any separate outcome measures utilized by the Monitor to assess compliance with the protocols incorporated under this Settlement Agreement will be developed in

consultation with the parties. In addition, the Monitor shall advise PNH management and staff as to possible procedures that, in the Monitor's view, may be implemented to facilitate compliance with this Settlement Agreement.

1. The Monitor shall not be bound in her conclusions, in whole or in part, on the basis of any certification by the Health Care Financing Administration.

2. Defendants are not bound by the Monitor's conclusions and may contest the same.

B. Defendants will afford the Monitor access to PNH at any time to assess compliance with this Settlement Agreement.

Subject to the budget provided pursuant to this Settlement Agreement, the Monitor shall visit PNH at least monthly until this action is dismissed consistent with § XIX of this Settlement Agreement, and shall have prompt access to all nursing home residents and their records. Except as otherwise provided in this Agreement, the Monitor shall also have access to relevant PNH and ELTC documents and records. The Monitor shall maintain the confidentiality of information obtained through this engagement in dealings with non-parties to this Settlement Agreement.

C. The Monitor shall attempt to coordinate her activities

with relevant PNH personnel in order to minimize disruption in the day to day operations of the facility. At all times, the Monitor shall respect the privacy and dignity of the PNH residents. The parties recognize that DePaul Health Care Company ("DePaul") is acting as the City's Contract Monitor regarding the conditions at PNH. Upon reasonable notice by the City that its Contract Monitor, DePaul, will be visiting PNH for its quarterly on-site visit, the Monitor agrees that she will not visit PNH during the one week period, except if conditions in PNH may constitute an immediate and serious jeopardy to the health and safety of the residents.

D. The Monitor shall create a report documenting any adverse findings relating to compliance with this Settlement Agreement and shall present the report within ten calendar days of the site visit to the Defendants, the United States Attorney's Office, the Civil Rights Division of the U.S. Department of Justice, and the U.S. Department of Health and Human Services, Office of Inspector General ("HHS-OIG"). The Monitor shall submit to the parties a quarterly status report regarding the City's compliance with the terms of this Settlement Agreement.

E. The Monitor shall submit to the parties within thirty days of her designation an initial budget for monitoring

activities. Subject to the budget provided pursuant to this Settlement Agreement, the Monitor may retain independent consultants, as needed, to meet her obligations under this Settlement Agreement. Defendants shall bear all reasonable costs of the Monitor consistent with the budget. The parties anticipate that the annual cost of the Monitor will not exceed Eighty-Five Thousand Dollars (\$85,000.00). In the event that this action is not dismissed after one year for lack of compliance with this Settlement Agreement, and the Monitor's budget has been exhausted, Defendants agree to fund the Monitor until this action is dismissed at the same annualized rate. The Monitor may confer and correspond with the parties on an ex parte basis.

F. Rebecca Berlin may be removed from the Monitor position solely at the discretion of the United States. In the event the Monitor is replaced, the United States shall submit the name(s) and curricula vitae of the new proposed Monitor to the Court and the Defendants shall have the right to present to the Court their position as to the new proposed Monitor.

XVIII. ACCESS TO PNH

The Monitor, the United States and its agents shall have the right to request, inspect, review and copy facility records,

resident charts and other documents, including all financial data pertaining to PNH, conduct interviews with residents and staff outside the presence of supervisory staff, and observe activities normally conducted at PNH to assess compliance with this Settlement Agreement. The United States agrees to provide Defendants with reasonable notice before seeking such access. The Monitor, the United States and its agents agree to respect the privacy and dignity of the PNH residents.

Non-public surveys conducted by the City's Contract Monitor and City Health officials shall not be part of the Monitor's or the United States' routine reviews of Defendants' compliance. For purposes of ensuring coordination of responses to identified problems, the Monitor shall confer regularly with the City's Contract Monitor and City Health officials about their findings and any proposed recommendations. The United States reserves the right to seek copies of the City's Contract Monitor and City Health surveys through discovery or an Inspector General subpoena and the Defendants reserve the right to challenge such request.

XIX. TERMINATION AND ENFORCEMENT OF SETTLEMENT AGREEMENT

A. The Defendants shall implement all provisions in the Settlement Agreement upon entry of this Settlement Agreement by the Court. The parties contemplate that the Court shall retain

jurisdiction of this action for one year to enforce the terms of this Settlement Agreement. In any event, the Court shall retain jurisdiction of this action for all purposes under this Settlement Agreement until Defendants shall have implemented and maintained implementation of all provisions of the Settlement Agreement and this action is dismissed.

B. On or after the date on which the Defendants shall have implemented and maintained implementation of all provisions of this Settlement Agreement, the Defendants may move that the case be closed on the grounds that Defendants have implemented and maintained all provisions of this Settlement Agreement.

C. By stipulation of the parties, dismissal shall be granted unless, within 60 days after receipt of the Defendants' motion, the United States objects to the motion. If the United States makes such an objection, the Court shall hold a hearing on the motion and the burden shall be on the Defendants to demonstrate that they have implemented and maintained implementation of all provisions of this Settlement Agreement.

D. During the term of this Settlement Agreement, nothing in this Settlement Agreement precludes the parties from conducting discovery pursuant to the Federal Rules of Civil Procedure nor shall be construed as a waiver of any legal or equitable rights,

remedies, defenses or privileges.

E. The parties reserve the right to withdraw consent to this Settlement Agreement in the event that this Settlement Agreement is not approved by the Court in its entirety.

F. If the United States or the Monitor determines that Defendants are failing to comply with a provision or provisions of the Settlement Agreement:

1. The United States or the Monitor shall provide Defendants with prompt written notification of such determination.
2. Before seeking Court enforcement, the United States agrees to allow Defendants seven days from receipt of the notification within which either: (1) to cure the Defendants' alleged failure to comply with a provision or provisions of the Settlement Agreement, or (2) to reply in writing, in opposition to the notification, that Defendants disagree with the conclusion of the United States or the Monitor that they are failing to comply with a provision or provisions of the Settlement Agreement. Upon receipt of such a written reply from Defendants, or if the seven days lapse without receipt of a written reply from Defendants, the United States shall notify Defendants if it intends to seek specific enforcement of the Settlement Agreement in

Court.

3. If the Defendants' failure to comply with the Settlement Agreement creates a condition or practice at PNH that rises to the level of an emergency, the period of cure specified in ¶ 2 above shall not apply. In an emergency, the United States may seek curative action of Defendants immediately upon notification or proceed immediately to Court.

4. The United States agrees to pursue judicial enforcement of this Settlement Agreement in the first instance by seeking specific enforcement of the provisions of the Settlement Agreement. Defendants agree that specific enforcement of the Settlement Agreement is an available and appropriate form of remedy.

5. The United States may seek a finding of contempt if the Court orders Defendants to specifically comply with a provision or provisions of the Settlement Agreement and Defendants have failed to comply with the Court's order or any other Court order in this matter. At any time during the course of this Settlement Agreement, the United States may also seek other equitable, remedial relief as may be appropriate, and Defendants may raise any appropriate defenses to such relief.

G. All parties shall bear their own costs, including attorney fees.

XX. RETALIATION

Defendants and its agents, employees, contractors, and/or subcontractors agree not to take any retaliatory action against any individual or individuals who cooperated with this investigation and/or who cooperates with the United States or the Monitor throughout the pendency of this Settlement Agreement.

XXI. PAYMENTS

Upon execution of this Settlement Agreement, Defendants agree to pay the sum of Fifty Thousand Dollars (\$50,000.00) to the United States of America under the False Claims Act. Payment of this amount shall be made to the United States Attorney's Office, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, Attention: David R. Hoffman.

Defendants also agree to set aside the amount of Fifteen Thousand Dollars (\$15,000.00) to be used to enhance the quality of life of residents at PNH. This \$15,000.00 amount shall be used for a special project that the United States authorizes, in consultation with the Monitor, and shall not be used to meet the minimum requirements for compliance with this Settlement Agreement.

XXII. RELEASES

A. In consideration for such repose and on the terms and conditions contained herein, and upon payment in full of the amount due in § XXI of this Settlement Agreement, and as expressly provided below, the United States releases and discharges Edward G. Rendell, Mayor of the City of Philadelphia, Estelle B. Richman, Commissioner of the Health Department, Molly Hess and Episcopal Hospital, and ELTC and its officers and directors, from any and all civil and administrative monetary claims, demands, damages, liability and causes of action for money damages, penalties and costs of investigation under the False Claims Act, 31 U.S.C. §§ 3729 et seq., the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a-7(b), (d), or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, or the common law theories of payment by mistake, unjust enrichment, breach of contract, and fraud, for the billing for alleged inadequate care rendered to residents of PNH from January 1, 1995 through January 1, 1998, in violation of regulations governing standards of care applicable to long-term care facilities as described in §§ I-IV of the investigative report dated December 19, 1996 ("Investigative Report") submitted by the Department of Justice to the Mayor of the City of Philadelphia, the Health Commissioner

and PNH's Administrator. HHS-OIG agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Defendants under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the above-stated conduct.

B. The parties agree that the release given in the preceding paragraph specifically excludes the following:

1. Any civil or administrative disputes, adjustments or claims relating to matters other than the alleged violation of standards of care rendered to residents of PNH from January 1, 1995 through January 1, 1998 or any conduct that is beyond the scope of the review conducted by the Department of Justice as set forth in §§ I-IV of the Investigative Report;
2. Any disputes or claims arising under the Internal Revenue Code;
3. Any disputes or claims arising under any express or implied warranties relating to products or services; and
4. Any disputes or claims arising under the criminal laws of the United States;

5. Any enforcement proceedings based upon the Defendants' violations of this Settlement Agreement;

6. Any claims for personal injury or property damage or for other consequential damages arising from the conduct set forth in §§ I-IV of the Investigative Report;

7. Any HHS-OIG administrative exclusion action or sanction pursuant to 42 U.S.C. 1320a-7(b) or 42 U.S.C. 1320a-7(d), or 42 U.S.C. §§ 1395i-3(h), 1396r(h), based on events occurring after the date of execution of this Settlement Agreement; and

8. Any intentional fraud committed by Defendants.

C. Defendants fully and finally release, dismiss, and forever discharge the United States, its agencies, employees, servants, and agents, from any and all claims, causes of action, liabilities, losses and damages, including attorney's fees, costs, and expenses, which Defendants have asserted or could have asserted against the United States, its agencies, employees, servants, and agents, related to any aspects of the care rendered to residents of PNH from January 1, 1995 through January 1, 1998, or to the matters described in §§ I-IV of the Investigative Report, or related to the United States' investigation or prosecution of any of these matters. This paragraph does not

apply to claims for payments made by Defendants from the Medicare and/or Medicaid programs for care adequately provided in the normal course of business and which was not the subject of or related to this investigation or prosecution by the United States, from January 1, 1995 through the date of this Settlement Agreement.

D. Defendants agree that all costs (as defined in the Federal Acquisition Regulation ("FAR") § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395 et seq. and §§ 1396 et seq., and the regulations promulgated thereunder) incurred by or on behalf of Defendants, in connection with: (1) the government's investigations, and Defendants' investigations and defense of the matters covered by this Settlement Agreement, (2) the negotiation of this Settlement Agreement, (3) any corrective action undertaken by Defendants for the released acts from January 1, 1995 until the termination of this Settlement Agreement, including but not limited to, the cost of the Monitor and the \$15,000.00 amount set forth in paragraph XXI, and (4) the payments made to the United States pursuant to this Settlement Agreement, shall be unallowable costs for government contract accounting and for Medicare, Medicaid, CHAMPUS, VA and FEHBP reimbursement purposes. These amounts

shall be separately estimated and accounted for by Defendants, and Defendants will not charge such costs directly or indirectly to any contracts with the United States or any State Medicaid program, or to any cost report, cost statement, or information statement submitted by Defendants, CHAMPUS, VA or FEHBP programs. Defendants agree further that within 60 days from execution of this Settlement Agreement by all parties, they will identify to applicable Medicare and CHAMPUS fiscal intermediaries, carriers and/or contractors, and Medicaid fiscal agents any unallowable costs (as defined in this paragraph) included in payments sought in any cost reports, cost statements or information reports already submitted by Defendants or any of its subsidiaries and will request that such cost reports, cost statements or information reports, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Defendants agree that the United States is entitled to recoup any overpayment as a result of the inclusion of such unallowable costs. Any payments due after the adjustments have been made shall be paid to the United States at the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Defendants or any of their subsidiaries on the

effect of inclusion of unallowable costs (as defined in this paragraph) on Defendants' or any of their subsidiaries' cost reports, cost statements or information reports. Nothing in this Settlement Agreement shall constitute a waiver of the rights of HHS, or any Medicare or CHAMPUS fiscal intermediary or contractor, or any Medicaid fiscal agent, to examine or re-examine the unallowable costs described in this paragraph.

XXIII. SIGNATURES

This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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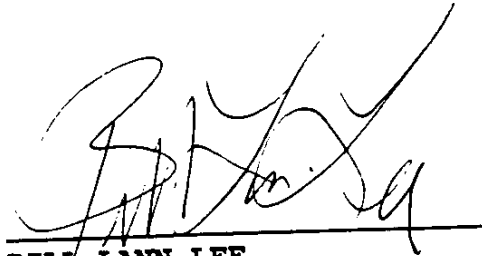
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CONSENTED TO BY THE UNDERSIGNED:

FOR THE UNITED STATES:



MICHAEL R. STILES
U.S. Attorney
Eastern District of
Pennsylvania



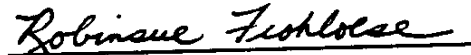
BILL LANN LEE
Acting Assistant
Attorney General
Civil Rights Division



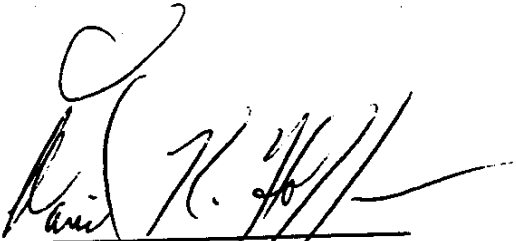
JAMES G. SHEEHAN
Assistant U.S. Attorney
Chief
Civil Division
Eastern District of
Pennsylvania



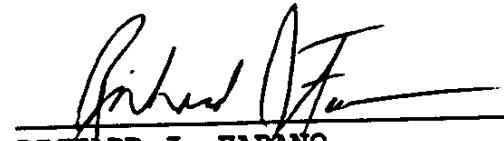
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ROBINSUE FROHBOESE
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(215) 665-4136
For Episcopal Long Term Care

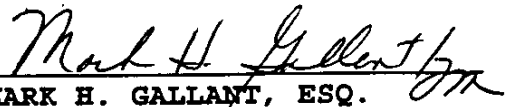
WHEREFORE, the parties to this action having agreed to the provisions in the Settlement Agreement set forth above, and the Court being advised in the premises, this Settlement Agreement is hereby entered as the ORDER and JUDGMENT of this Court.

IT IS SO ORDERED, this _____ day of _____, 1998, at _____, PA.

UNITED STATES DISTRICT JUDGE

FOR THE DEFENDANTS:

STEPHANIE L. FRANKLIN-SUBER
Philadelphia City Solicitor
Law Department
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Philadelphia, PA 19102-1595
(215) 683-5003


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1900 Market Street
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For Episcopal Long Term Care

WHEREFORE, the parties to this action having agreed to the provisions in the Settlement Agreement set forth above, and the Court being advised in the premises, this Settlement Agreement is hereby entered as the ORDER and JUDGMENT of this Court.

IT IS SO ORDERED, this _____ day of _____, 1998, at _____, PA.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CIVIL ACTION
:
v. :
:
THE CITY OF PHILADELPHIA, et al.: NO. 98-4253

ORDER

AND NOW, this 14th day of August, 1998, upon
consideration of the United States' uncontested motion to enter
the settlement agreement, and in view of the Court's continuing
involvement contemplated in, inter alia, Sections II.D. and XIX
of the Settlement Agreement, the Court finding that the
Settlement Agreement is 1 appropriate
resolution of this case,) that:

1. The United States' motion to enter the
settlement agreement is GRANTED;
2. The Settlement Agreement is APPROVED; and
3. The Settlement Agreement is hereby ENTERED as a
Judgment and Decree of this Court.

BY THE COURT:


Stewart Dalzell, J.